

**REMARKS**

Claims 1-3, 5, 6, 8-15 and 17-39 are pending. The Office Action dated September 11, 2003, has been carefully considered. Applicant requests that the Examiner consider the above amendments and the following remarks, and pass the application to allowance.

**Claim Objection**

Claims 1-3, 5-6, 8-15 and 17-39 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. In the claims, the Office Action states that the phrase, "rigid plates" is inaccurate, vague and indefinite. Although, the PTO policy on rejections under 35 U.S.C. §112, second paragraph, allows "some latitude in the manner of expression and aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire," Applicant has amended the claims by removing the term "rigid" from the description of the first plate and the second plate.

**Rejection Under 35 U.S.C. §102**

Claims 1, 5-6, 8, 12, 17 - 33, 35, 36, and 38 have been rejected under 35 U.S.C. §102(b) as being anticipated by Horibata et al. (4,457,084).

Claims 1, 5, 8, and 20 as amended recite an energy return system for an article of footwear. The energy return system includes a first plate (upper plate) and a second plate (lower plate) spaced a predetermined distance from said first plate. The first and second plates are made from an elastic material of high tensile strength. At least one elastomeric separating element is disposed therebetween to maintain the spacing between the plates, wherein the first and second plates deflecting and storing energy when loaded by a wearer during a phase of gait cycle, the first and second plates returning to a non-deflected state and releasing stored energy into a step forward and upward, propelling the wearer at a subsequent phase of gait cycle. (Emphasis added).

Horibata et al. relates to a hopping and dancing shoe having a sole member, a stable base member parallel thereto, and a spring therebetween. The sole member and the base member do not deflect and storing energy when loaded by a wearer during a phase of gait cycle, and returning to a non-deflected state and releasing stored energy into a step forward and upward, propelling the wearer at a subsequent phase of gait cycle. Accordingly, claims 1, 5, 8, and 20 should be allowable. Claims 6, 12, 17-19, 21-33, 35, 36, and 38 are dependent from Claims 1, 5, 8, and 20 and should be allowable for the same reason.

Claims 5, 17, 21, 22, 23, 25, 26, 27, 29, 30, and 31 have been rejected under 35 U.S.C. §102(b) as being anticipated by Cox (3,739,500).

As set forth above, Claim 5 has been amended to recite an article of footwear having, the first and second plates deflecting and storing energy when loaded by a wearer during a phase of gait cycle, the first and second plates returning to a non-deflected state and releasing stored energy into a step forward and upward, propelling the wearer at a subsequent phase of gait cycle. (Emphasis added)

Cox relates to an exercise shoe having a flexible pillar sole member attached to the front portion of a shoe. The pillar portion causes the wearer to stand, walk and run without touching his heels to the ground and provides for dynamic exercise. Cox, however, does not teach or suggest an article of footwear having first and second plates deflecting and storing energy when loaded by a wearer during a phase of gait cycle, the first and second plates returning to a non-deflected state and releasing stored energy into a step forward and upward, propelling the wearer at a subsequent phase of gait cycle, Claim 5 should be allowable. Claims 17, 21, 22, 23, 25, 26, 27, 29, 30, and 31 are dependent from Claim 5, and should be allowable for the same reasons.

Claims 8, 17, 18, 19, and 36 have been rejected under 35 U.S.C. §02 (b) as being anticipated by Miceli (1,516,395).

Miceli relates to a shoe attachment having upper and lower plates. The plates are each provided with concavities arranged in equi-distantly spaced relation and in a manner whereby the concavities of the upper plate cooperate with the top plate in receiving spherical connecting pieces which can be formed of any kind of resilient material such as rubber or rubber composition.

For the reasons set forth above and further since Miceli does not teach or suggest an energy return system having first and second plates deflecting and storing energy when loaded by a wearer during a phase of gait cycle, the first and second plates returning to a non-deflected state and releasing stored energy into a step forward and upward, propelling the wearer at a subsequent phase of gait cycle, Claims 8, 17, 18, 19, and 36 should be allowable.

Rejections Under 35 U.S.C. §103

Claims 2-3, 9-11, 13-15, 34, 37 and 39 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Horibata in view Schmid (4,858,338). Claims 9-11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Cox in view of Schmid. Claims 9-11 and 13 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Miceli in view of Schmid.

Schmid relates to an insert for a shoe sole which includes a strip made of an elastic material disposed between an outer sole portion and an upper sole portion of the sole of a shoe.

For the reasons set forth above as to Claims 1, 5, 8, and 20 and further since Schmid does not teach or suggest an energy return system having first and second plates deflecting and storing energy when loaded by a wearer during a phase of gait cycle, the first and second plates returning to a non-deflected state and releasing stored energy into a step forward and upward, propelling the wearer at a subsequent phase of gait cycle, Claims 2-3, 9-11, 13-15, 34, 37, and 39 should be allowable.

Summary

In summary, the shoe of the present invention stores up and returns energy during walking or running thereby improving the efficiency of the athlete. The energy return is provided by two spaced apart plates made from an elastic material of high tensile strength separated by one or more elastomeric separating members which allow independent movement of the plates in the vertical and medial lateral directions. The ability to accommodate medial lateral motion allows the energy return system to receive and return energy throughout the gait cycle which is not limited to vertical motion. This configuration provides an improved energy return efficiency with less strain on the wearer than the shoes known in the prior art.

Since none of the prior art teaches or suggests first and second plates deflecting and storing energy when loaded by a wearer during a phase of gait cycle, the first and second plates returning to a non-deflected state and releasing stored energy into a step forward and upward, propelling the wearer at a subsequent phase of gait cycle, the claims are allowable over the prior art.

In the event that there are any questions concerning this Amendment or the application in general, the Examiner is respectfully urged to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,

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